

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #11	CCRB Case #: 201905233	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 05/09/2019	Location of Incident: Inside § 87(2)(b)	Precinct: 71	18 Mo. SOL 11/9/2020	EO SOL 6/26/2021	
Date/Time CV Reported Thu, 06/06/2019 3:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/17/2019 10:52 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Mariangela Graffagnino	08863	960613	071 PCT
2. POM Yevhen Bizhko	01350	964394	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Mariangela Graffagnino	Abuse: Police Officer Mariangela Graffagnino entered § 87(2)(b) in Brooklyn.	
B.POM Yevhen Bizhko	Abuse: Police Officer Yevhen Bizhko entered § 87(2)(b) in Brooklyn.	
C.POF Mariangela Graffagnino	Force: Police Officer Mariangela Graffagnino used physical force against § 87(2)(b)	
D.POM Yevhen Bizhko	Force: Police Officer Yevhen Bizhko used physical force against § 87(2)(b)	

## Case Summary

On June 6, 2019, § 87(2)(b) filed this complaint with IAB via phone. IAB Log number 19-22196 was generated. On June 17, 2019, the CCRB received this complaint under IAB Log number 19-22635. On November 18, 2019, this case was closed—pending litigation due to § 87(2)(b)'s pending criminal charges. On May 28, 2020 this case was reopened by § 87(2)(b) due to the resolution of his criminal charges.

On May 9, 2019, § 87(2)(b) was at his residence at § 87(2)(b) in Brooklyn when he and his cousin, § 87(2)(b) started an argument over his tenancy in the apartment. § 87(2)(b) called 911 and PO Mariangela Graffagnino and PO Yevhen Bizhko, both of the 71<sup>st</sup> Precinct, arrived at the location. After a brief discussion with § 87(2)(b) at the door, PO Graffagnino and PO Bizhko stepped into the front vestibule of the apartment to place him under arrest (**Allegation A- Abuse of Authority-** § 87(2)(g) ; **Allegation B- Abuse of Authority-** § 87(2)(g). While handcuffing § 87(2)(b) the officers pulled on his arms (**Allegation C- Force-** § 87(2)(g) ; **Allegation D- Force-** § 87(2)(g) § 87(2)(b) was ultimately arrested for § 87(2)(b)

(Board Review 01).

IAB provided three videos of what occurred, one of which captured § 87(2)(b)'s apprehension. The videos were provided to IAB by § 87(2)(b) and the one that captured his apprehension was taken by an unidentified female individual. (Board Review 02). NYPD Legal also provided videos from the body-worn cameras (BWCs) of PO Graffagnino, and PO Bizhko (Board Review 03 and Board Review 04).

**Allegation (A) Abuse of Authority: Police Officer Mariangela Graffagnino entered § 87(2)(b) in Brooklyn.**

**Allegation (B) Abuse of Authority: Police Officer Yevhen Bizhko entered § 87(2)(b) in Brooklyn.**

It is undisputed that § 87(2)(b) called the police after a dispute with her cousin, § 87(2)(b) over tenancy in § 87(2)(b). The multi-unit residential building was owned by § 87(2)(b) and § 87(2)(b)'s mutual grandmother, who was not present at the time.

PO Graffagnino's BWC video shows part of her initial interview of § 87(2)(b) and the entirety of the entry into the apartment. During the interview, which took place just outside of the front door of the building § 87(2)(b) alleged that § 87(2)(b) choked her and followed her to the basement of the dwelling. She mentioned that he threw her shoes out of the apartment but that the rest of her clothing was still there. She also stated that she had the keys (Board Review 03, timestamps 00:00:00-00:03:00 in the video player). She walked the officers to § 87(2)(b) through the front part of the first-floor hallway. There was a cardboard box and two televisions visible in the hallway. There was no pair of shoes, but darkness obscured the rear part of the hallway. She opened the door, where § 87(2)(b) was inside. PO Graffagnino asks him what happened, and he said that § 87(2)(b)—who he said he lived alone in the residence—invaded it without his permission. PO Graffagnino then steps into the apartment, asking § 87(2)(b) to put his hands behind his back. (Board Review 03, timestamps 00:03:00-00:05:11 in the video player).

PO Bizhko's BWC shows a similar sequence of events with respect to the interview (Board Review 04, 00:00:00 to 00:03:00 in the video player), and also shows PO Graffagnino

pushing the door further open (Board Review 04, timestamp 00:03:40 in the video player) and standing just outside of the entry at the beginning of her conversation with § 87(2)(b) then stepping inside once she tells him to put his hands behind his back to be arrested (Board Review 04, timestamps 00:04:30-00:05:00 in the video player).

§ 87(2)(b) during a phone interview stated that § 87(2)(b) walked into the apartment while her father was doing maintenance work. She did not live there—§ 87(2)(b) lives alone—but she frequently tried to come in without his permission. She did not have keys to the apartment. He denied that anyone fought or argued before the police arrived at the apartment (Board Review 05).

He first realized that police were present when the door to his apartment swung open and PO Graffagnino appeared standing over the threshold with PO Bizhko holding the door open behind her. She asked if he was § 87(2)(b). He confirmed that he was. § 87(2)(b) told her to leave unless she had a warrant. Within 40 seconds, she told § 87(2)(b) to lie on the ground so that she could handcuff him. § 87(2)(b) said that he would be happy to be handcuffed in the hallway, but that he could not be handcuffed inside of his apartment (Board Review 05).

§ 87(2)(b) said over the phone that § 87(2)(b) pushed and choked her during an argument over the apartment, and that she called police. When they arrived, she told them that she lived at the apartment and that he had pushed and choked her. At the time, she had keys to the apartment. She took the officers to the apartment and let them in so that they could talk to him. During a follow-up phone call, she said that she told the officers that she lived in the apartment and that he did not (Board Review 06, Board Review 15).

§ 87(2)(b) told PO Graffagnino that § 87(2)(b) pushed, punched, and choked her while having a fight with her about her entering the apartment. § 87(2)(b) said that she lived in the building, but she did not recall her specifying a unit, nor did she make any further inquiry into her residence of and access to the apartment. She did not do so because she did not believe that this information was relevant to the arrest. She did not remember § 87(2)(b) telling her that § 87(2)(b) did not live in the apartment. When she asked where § 87(2)(b) was, § 87(2)(b) pushed open the door, which appeared to be unlocked, with her hands. PO Graffagnino did not realize whether § 87(2)(b) had the keys to the residence (Board Review 07).

When § 87(2)(b) opened the door, § 87(2)(b) answered, and confirmed his identity. When PO Graffagnino asked him to speak to her outside of the apartment, he said that he would instead remain inside. PO Graffagnino then stepped into the apartment to pull him out and arrest him just inside of the door to the apartment (Board Review 07).

PO Bizhko provided a statement consistent with PO Graffagnino's except for the following statements: When § 87(2)(b) pushed the unlocked door open. PO Bizhko believed that she had access to the apartment. PO Graffagnino spoke to § 87(2)(b) who was just behind the door. During this conversation, PO Graffagnino was in the middle of the threshold. She told § 87(2)(b) to put his hands behind his back, and to come out of the apartment. § 87(2)(b) said, "You cannot put handcuffs on me in my own apartment and I am not leaving because I have friends over" (Board Review 08).

§ 87(2)(g)

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People v. Watson, 101 A.D.3d 913 (2012), quoting People v. Cosme, 48 N.Y.2d 286 (1979), held that “the police may lawfully conduct a warrantless search when they have obtained the voluntary consent of a party who possesses the requisite degree of authority and control over the premises or personal property in question” (Board Reviews 09 and 10).

§ 87(2)(g)

**Allegation (C) Force: Police Officer Mariangela Graffagnino used physical force against**

§ 87(2)(b)

**Allegation (D) Force: Police Officer Yevhen Bizhko used physical force against** § 87(2)(b)

It is undisputed that once PO Graffagnino and PO Bizhko started handcuffing § 87(2)(b) he began to object verbally. After a brief physical struggle, he offered to get on the ground.

PO Graffagnino’s BWC video shows her telling § 87(2)(b) to place his hands behind his back. It then shows her grabbing his arm and him telling her that she will not put handcuffs on him in his house. She tells him multiple times to stop resisting arrest. The view from the video is shaky, but it can be seen that she holds onto one of his handcuffs as she does this and tells him several times to get down, give her his other hand, and put his hands behind his back. § 87(2)(b) eventually goes to the ground and the officers place handcuffs on both hands (Board Review 03, timestamps 00:05:00-00:07:00 in the video player).

PO Bizhko’s BWC video shows PO Graffagnino and PO Bizhko telling § 87(2)(b) to put his hands behind his back, one officer holding each arm. For approximately one minute, as PO Bizhko tries to pull § 87(2)(b)’s arm behind his back, he pulls away from the officers, both with his body and his arms as PO Graffagnino tries to pull his arm behind his back and PO Bizhko tries to pull him out of the apartment. He says to them that they will not put handcuffs on him. PO Bizhko’s BWC video goes dark and his video shuts off during the struggle (Board Review 04, timestamps 00:04:55 to 00:06:23 in the video player).

The video § 87(2)(b) provided to IAB, taken by an unidentified witness, shows the officers pulling at § 87(2)(b)’s arms, and § 87(2)(b) agreeing to go to the ground (Board Review 02, timestamps 00:00:00 to 00:00:31 in the video player).

§ 87(2)(b) testified that as they were trying to handcuff him, the officers pulled downwards on his arms. He did not allege any additional force besides the pulling on his arms. He denied resisting arrest. He stated that he wanted to stand straight up as the officers were pulling him downwards, but he could not describe any other way that he was moving. He sustained a cut on his right arm, swelling and small cuts to his wrist and pain in one of his shoulders but he did not know how these injuries occurred (Board Review 05).

§ 87(2)(b) did not see the struggle between § 87(2)(b) and the officers. (Board Review 06).

PO Graffagnino testified that § 87(2)(b) pulled his arms and tensed up his body, and she pulled one of his arms behind his back in response. She did not remember pulling downwards on his arms. She recalled a scratch on his arms but did not know how he sustained it (Board Review 07).

PO Bizhko also testified that § 87(2)(b) was making his body tense and waving his arms around after PO Graffagnino put one handcuff on him. § 87(2)(b) was trying to pull himself into the living room of the residence, which would not have been advantageous tactically for the officers, so PO Bizhko pulled downwards on one of § 87(2)(b)'s handcuffs to pull him away from the living room (Board Review 08).

Patrol Guide Procedure 221-01 requires that officers use reasonable force necessary to place a subject into custody. Factors used to assess reasonableness include the severity of the crime and circumstances, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm to those present, whether the subject is actively evading custody, whether the subject is trying to evade arrest by flight, number of subjects in relation to the officer, size, age, and condition of the officers in comparison to the subject, any known violent history, or any substance affecting pain tolerance (Board Review 11).

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 12).
- PO Graffagnino has been a member of service for four years. Two prior CCRB complaints have been filed against her. Neither has been substantiated.
  - § 87(2)(g)
- PO Bizhko has been a member of service for two years. This is the first CCRB complaint filed against him.

## Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to the arrest involved.
- On October 1, 2020, a request for a notice of claim was submitted to the New York City Office of the Comptroller. The results will be added to the file upon receipt (Board

Review 13).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Squad No.: 11

Investigator: Miriam Lynch SI Miriam Lynch 11/09/2020  
Signature Print Title & Name Date

Squad Leader: Edwin Pena IM Edwin Pena 11/10/20  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date